

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA220

## PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY  
(PCT Rule 43b/s.1)

Date of mailing  
(day/month/year) see form PCT/ISA210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/GB2004/003009

International filing date (day/month/year)  
12.07.2004

Priority date (day/month/year)  
11.07.2003

International Patent Classification (IPC) or both national classification and IPC  
A61B5/087

Applicant  
MICRO MEDICAL LTD

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 68.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA220.

3. For further details, see notes to Form PCT/ISA220.

Name and mailing address of the ISA:



European Patent Office - Gitschiner Str. 103  
D-10558 Berlin  
Tel. +49 30 25901 - 0  
Fax: +49 30 25901 - 840

Authorized Officer

Pohjamo, T

Telephone No. +49 30 25901-577



10/563891

IAP20 Rec'd PCT/PTO 09 JAN 2006

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**International application No.  
PCT/GB2004/003009**Box No. I Basis of the opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**International application No.  
PCT/GB2004/003009**Box No. II Priority**

- 1.
- ☒
- The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

- 2.
- ☐
- This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-9
Inventive step (IS)	Yes: Claims	
	No: Claims	1-9
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

see separate sheet

**Box No. VI Certain documents cited**

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

**10/563891****IAP20 Res 01/10/06 09 JAN 2006****WRITING OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB2004/003009**Re Item V.**

- 1 The following documents are referred to in this communication:
- D1 : WO 98/14115 A (SIERRA BIOTECHNOLOGY COMPANY L) 9 April 1998  
(1998-04-09)
- D2 : US 6 015 388 A (INMAN D MICHAEL ET AL) 18 January 2000 (2000-01-18)

**2 INDEPENDENT CLAIM 1**

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.  
Document D1 discloses (the references in parenthesis applying to this document):

Apparatus (Fig.1) for determining respiratory muscle endurance of a person (apparatus in D1 is suitable for that), which apparatus comprises a mouthpiece (4, Fig.1) through which the person inspires (p.12 lines 10-11), load-providing means (2) for providing a pressure against which the person inspires, and pressure control means (2, 14; p.12 lines 23-25) for controlling the pressure, the pressure control means being such that it controls the pressure in response to a breathing pattern of the person (p.14 lines 2-6).

- 2.2 Also document D2 discloses the subject-matter of claim 1 (col.1 lines 15-27; col.11 lines 31-36; where the device is suitable for determining respiratory muscle endurance, and also suitable for providing and controlling a pressure against which the person inspires). Therefore the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

**3 DEPENDENT CLAIMS 2-9**

Dependent claims 2-9 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).